

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA and
STATE OF NEW YORK *ex rel.* CAROL
BEVILACQUA,

Plaintiffs,

v.

CITY PRACTICE GROUP OF NEW YORK,
LLC, et al.,

Defendants.

14 Civ. 9933 (KPF)

UNITED STATES OF AMERICA

Plaintiff-Intervenor,

v.

CITY PRACTICE GROUP USA, LLC

Defendants.

14 Civ. 9933 (KPF)

**STIPULATION AND ORDER OF PARTIAL SETTLEMENT AND RELEASE
BETWEEN THE UNITED STATES AND RELATOR**

WHEREAS, this Stipulation and Order of Settlement and Release (the “Relator Stipulation”) is entered into between the United States of America (the “United States”), by its attorney Geoffrey S. Berman, United States Attorney for the Southern District of New York, and relator Carol Bevilacqua (“Relator” and, together with the United States, the “Parties”), through her counsel;

WHEREAS, on or about December 17, 2014, Relator filed a complaint in the above-captioned action in the United States District Court for the Southern District of New York (the “Court”) under the *qui tam* provisions of the False Claims Act, as amended, 31 U.S.C. § 3729 *et seq.* (the “FCA”), alleging, *inter alia*, that defendants: submitted claims for services that were not

actually provided; submitted claims for after-hour health care services that were actually provided during posted business hours; submitted non-reimbursable claims for unwarranted facility fees; submitted claims for injury-related health care services that had previously been billed to and paid by patients' Workmen's Compensation carriers; failed to comply with conditions of payment under the Medicaid and Medicare programs, such as improperly recording a patient's history prior to assigning a level of evaluation; submitted claims for health care services by physicians who did not actually render the care to the patient; and failed to make reasonable efforts to collect co-payments and deductibles and waiving such charges prior to billing the patient (the "Relator Action");

WHEREAS, on or about May 2, 2018, the United States filed a complaint-in-intervention (the "Government Complaint"), alleging that defendant City Practice Group USA, LLC ("Defendant") submitted or caused to be submitted to the Medicare program false claims for: (a) professional medical services using the name and National Provider Identification numbers of physicians who did not render or supervise the services in question, when the services were rendered by other physicians in the practice who were not credentialed at the time the services were rendered; and (b) lengthier and/or more complex Evaluation and Management services and procedures for patients than it actually performed or were supported by the medical record documentation (the "Covered Conduct");

WHEREAS, on or about May 2, 2018, the United States, Defendant, and Relator entered into a Stipulation of Settlement and Dismissal (the "Settlement Agreement");

WHEREAS, pursuant to Paragraph 3 of the Settlement Agreement, Defendant agreed to pay the United States \$6,606,251.40 (the "Settlement Amount") to resolve the claims of the United States for the Covered Conduct;

WHEREAS, pursuant to Paragraph 11 of the Settlement Agreement, Relator agreed and confirmed that the terms of the Settlement Agreement are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B);

WHEREAS, the Relator has asserted that, pursuant to 31 U.S.C. § 3730(d)(l), she is entitled to receive a portion of the Settlement Amount (the “Relator Share Claim”);

WHEREAS, on August 27, 2018, the Court entered a Stipulation and Order of Partial Settlement and Release pursuant to which the United States paid Relator fifteen percent (15%) of the Settlement Amount received from Defendant totaling \$990,937.71 (the “15% Share”) in partial settlement of the Relator Share Claim, and the Relator reserved the right to seek a larger share of the Settlement Amount pursuant to 31 U.S.C. § 3730(d)(l); and

WHEREAS, the Parties hereto mutually desire to reach a full, complete, and final settlement of the Relator’s Claim against the United States for a portion of the Settlement Amount pursuant to the terms set forth below.

NOW, THEREFORE, the Parties agree as follows:

1. The United States will pay Relator, c/o Liles Parker PLLC, as attorneys for Relator (“Relator’s Counsel”), five percent (5%) of the payment of the Settlement Amount received from Defendant totaling \$330,312.57 (the “5% Share”) in accordance with written instructions provided by Relator’s Counsel within a reasonable time after execution of this agreement.
2. In agreeing to accept payment of the 5% Share and the 15% Share, and upon payment thereof, the Relator, for herself and her heirs, successors, attorneys, agents, and assigns, releases and is deemed to have released and forever discharged the United States, and its agencies, officers, employees, servants, and agents, from any claims pursuant to 31 U.S.C. § 3730 for any share of the Settlement Amount, and from any and all claims against the United States, and its agencies,

officers, employees, servants, and agents, arising from or relating to the filing of the Relator's Action or the filing of the Government Complaint.

3. This Relator Stipulation does not resolve or in any manner affect any claims the United States has or may have against Relator arising under Title 26, U.S. Code (Internal Revenue Code), or any claims that the Parties may have arising under this Relator Stipulation.

4. This Relator Stipulation shall inure to the benefit of and be binding only on the Parties, their successors, assigns and heirs.

5. Each of the signatories represents that he or she has the full power and authority to enter into this Relator Stipulation.

6. This Relator Stipulation shall become final, binding, and effective only upon entry by the Court.

7. This Relator Stipulation constitutes the entire agreement of the Parties with respect to the subject matter of this Relator Stipulation and may not be changed, altered, or modified, except by a written agreement signed by the Parties specifically referring to this Relator Stipulation.

8. This Relator Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Relator Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Relator Stipulation, this Relator Stipulation shall be deemed to have been drafted by all Parties to it and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

9. This Relator Stipulation may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

Dated: New York, New York
February 8, 2019

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
Attorney for Plaintiff United States of America

By: 

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Dated: 8 February
_____, 2019

Carol Bevilacqua
Carol Bevilacqua, Relator

Dated: Washington, D.C.
February 8, 2019

LILES PARKER PLLC
Attorneys for Relator


By: _____

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Email: dparker@lilesparker.com

Dated: _____,
_____, 2019

Carol Bevilacqua, Relator

Dated: Washington, D.C.
February 8, 2019

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Attorneys for Relator
By: 
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SO ORDERED:

February 12, 2019

A handwritten signature in blue ink, reading "Katherine P. Failla". The signature is written in a cursive, flowing style.

HONORABLE KATHERINE P. FAILLA, U.S.D.J.